

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

Crl.MC.No. 1955 of 2006()

CMP.1879/2005 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD
CR.NO.80/2005 OF THE KASARAGOD POLICE STATION
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PETITIONER: ACCUSED

C.SATHEESH KUMAR,
(L.D.CLERK, K.S.R.T.C., KALPATTA),
"RAMANEYAM", KAITHAVILA, PERAVOOR P.O.,
CHATHANNUR, KOLLAM DIST.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINANT

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1. STATE, RE. BY SHO, KASARAGOD,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
 2. K.J.MATHEW, S/O. JOSEPH,
KIZHAKKAYIL HOUSE, THAYYENI P.O.,
CHERUPUZHA VIA., KANNUR DIST.

BY ADV. SRI.I.V.PRAMOD
SRI.SOJAN MICHEAL
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.1955 of 2006

Dated this the 26th day of February 2007

O R D E R

The petitioner is the accused in a prosecution initiated interalia under Section 420 I.P.C. He has come to this court with a complaint about the heartless manner in which cognizance has been taken of the offence punishable under Sections 406, 417, 411 and 420 I.P.C against him.

2. Cognizance has been taken on the basis of a private complaint filed by the second respondent herein. At the time when this Criminal Miscellaneous Case was filed, it appears that cognizance has not been taken. But it is submitted that, subsequently, cognizance has been taken and the case is now pending as C.C.No.916/05 of the learned Chief Judicial Magistrate, Kasaragod.

3. The short contention of the petitioner is that the allegations in the complaint, even if accepted in toto, do not reveal any offence committed by the petitioner. It would be a traversery of justice to compel the petitioner to face the ordeal of a criminal trial. In these circumstances, powers under Section

482 Cr.P.C may be invoked and the proceedings against the petitioner may be brought to premature termination, prays the learned counsel for the petitioner.

4. First of all, it will be apposite to look at the nature of the allegations. The petitioner and the second respondent are co-workers under the same common employer - the Kerala State Road Transport Corporation. They had offered themselves as sureties for the other - mutual sureties, to enable them to avail loan from a Co-operative Society. The petitioner availed a loan for which the second respondent and another were the sureties. The second respondent availed a loan for which the petitioner and that other surety were the sureties. The second respondent promptly and faithfully discharged his liability. But the petitioner did not discharge the liability. Whenever the second respondent made enquiries, he was assured that the needful shall be done and the liabilities shall be discharged. But the liabilities stand undischarged and the society is now initiating steps against the second respondent. The second respondent had filed a private complaint. It was referred to the police for investigation under Section 156(3) Cr.P.C. The police had

referred the complaint as one of civil nature. The petitioner has, thereafter, filed a protest complaint in which cognizance was taken and C.C.916/05 was registered.

5. The crux or the gravamen of the offence of cheating is the making of a false representation which the maker knows to be false and which he makes with deceitful intent to persuade the victim to act on the basis of such false representation. In the instant case, the alleged false representation is the statement allegedly made by the petitioner that he shall discharge the liabilities. On the basis of that representation, the second respondent allegedly agreed to offer himself as a surety for the petitioner.

6. It is, by now, trite that the mere breach of every promise does not give rise to a valid cause of action for prosecution for the offence of cheating. At the time of making the representation, the maker must have made the representation knowing the same to be false and with deceitful intent.

7. Even if the entire version of the complainant/second respondent were accepted, the rival contestants had offered themselves as a surety for the other. Though there has been

breach of the agreement to discharge the liability incurred by the petitioner, there is absolutely nothing to even remotely indicate that there was any deceitful intent at the time when the representation was made. That the representation/promise was not adhered to, by itself, is not a sufficient ground to justify initiation of prosecution for the offence of cheating.

8. It follows from the above discussions that the complaint filed is without any merit and this is an eminently fit case where powers under Section 482 Cr.P.C can and ought to be invoked.

9. In the result, this Criminal Miscellaneous Case is allowed. C.C.No.916/05 pending before the learned Chief Judicial Magistrate, Kasaragod initiated on the basis of Annexure A1 complaint filed by the second respondent is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006